JUDICIAL REVIEW AND THE RULE OF LAW

Foundational Principles of Constitutional Governance in the United States

1. Introduction

Two closely related principles lie at the heart of the American constitutional system: the rule of law and judicial review. Together they ensure that governmental power remains limited, accountable, and subordinate to a higher legal order—the Constitution of the United States. This document explains the meaning of each principle, their historical development, and the essential relationship between them.

2. The Rule of Law

The rule of law is the principle that all persons, institutions, and entities—public and private, including the government itself—are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. In its most fundamental sense, it means that no one is above the law.

Core Elements of the Rule of Law

Although definitions vary, most accounts of the rule of law emphasize the following interrelated elements:

- **Supremacy of Law** — The law is the highest authority. Government officials exercise only those powers conferred by law and must themselves obey the law.
- **Equality before the Law** — The law applies equally to all persons without regard to status, wealth, or political power.
- **Legal Certainty and Publicity** — Laws must be clear, publicly accessible, prospective in effect, and stable enough to allow individuals to plan their conduct.
- **Independent Adjudication** — Disputes are resolved by impartial and independent courts according to fair procedures.
- **Accountability** — Public officials are answerable for their actions under the law and may be held to account through legal processes.
- **Protection of Fundamental Rights** — The law safeguards basic rights and liberties against arbitrary interference.

In the American tradition, these ideas draw on English constitutional history (including Magna Carta), Enlightenment political thought, and the practical experience of limited government under written constitutions. The U.S. Constitution institutionalizes the rule of law through the separation of powers, checks and balances, an independent judiciary, and the supremacy of the Constitution itself (Article VI).

3. Judicial Review

Judicial review is the authority of courts to examine the constitutionality of legislative acts and executive actions and to refuse to give effect to those that conflict with the Constitution. When a court finds a statute or official action unconstitutional, it declares the measure void and unenforceable.

Constitutional Foundation

The Constitution does not explicitly use the phrase “judicial review.” The power is derived from the structure and logic of the constitutional text, particularly Article III (vesting the judicial power) and Article VI (the Supremacy Clause). The Supremacy Clause declares the Constitution, and the laws and treaties made pursuant to it, to be “the

supreme Law of the Land," binding on judges in every state.

Marbury v. Madison (1803)

The doctrine of judicial review was firmly established by the Supreme Court in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Writing for a unanimous Court, Chief Justice John Marshall held that a provision of the Judiciary Act of 1789 that purported to expand the Court's original jurisdiction beyond the limits set by Article III was unconstitutional and therefore void.

Marshall's reasoning remains the classic statement of the principle:

> *"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. . . . If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply."*

Because the Constitution is a superior, paramount law, any legislative act contrary to it is not law at all. Courts, whose duty is to apply the law to cases before them, must therefore prefer the Constitution over conflicting ordinary legislation.

Scope of the Power

Judicial review extends to acts of Congress, actions of the executive branch, and laws and official actions of the states. Federal courts may invalidate state laws that conflict with the Constitution or with valid federal statutes. State courts likewise exercise judicial review under both the federal Constitution and their own state constitutions.

The power is not unlimited. Courts decide only actual cases or controversies; they do not issue advisory opinions. The doctrines of standing, ripeness, mootness, and the political-question doctrine further channel the exercise of judicial review. Moreover, the judiciary's interpretations remain subject to constitutional amendment and, over time, to the influence of public opinion and the other branches.

4. The Relationship Between Judicial Review and the Rule of Law

Judicial review is one of the principal institutional mechanisms by which the rule of law is maintained in a constitutional system. Without an independent judiciary capable of enforcing constitutional limits, the supremacy of the Constitution would remain largely theoretical. Legislatures and executives could, in practice, disregard constitutional restraints with impunity.

By invalidating unconstitutional measures, courts ensure that government remains within the bounds of the higher law that the people have established. In this way, judicial review serves the rule of law by:

- Constraining governmental power and preventing arbitrary action;
- Upholding equality before the law by applying constitutional standards impartially;
- Protecting individual rights against majoritarian or official overreach;
- Maintaining the separation of powers by checking the legislative and executive branches; and
- Reinforcing legal certainty by clarifying the meaning and application of constitutional provisions.

At the same time, judicial review itself operates under the rule of law. Judges are bound by the Constitution and by established methods of legal reasoning. Their decisions are subject to appellate review, public scrutiny, and, ultimately, the possibility of constitutional amendment. The legitimacy of judicial review depends on the judiciary's fidelity to law rather than to policy preferences.

5. Significance in the American Constitutional System

The combination of a written Constitution, separation of powers, and judicial review has made the United States a leading example of constitutionalism. Judicial review has been exercised in landmark cases addressing federalism, individual rights, equal protection, separation of powers, and the limits of governmental authority.

While the practice of judicial review has generated ongoing debate—particularly concerning the proper role of courts relative to democratic majorities—its existence remains a defining feature of American government. It embodies the foundational premise that the Constitution is law, and that even the most powerful institutions of government are subject to it.

6. Conclusion

The rule of law requires that government itself be bound by law. Judicial review supplies an essential means of enforcing that requirement by empowering independent courts to measure governmental acts against the Constitution and to set aside those that fail the test. Together, these principles protect ordered liberty, preserve the structural design of the Constitution, and affirm that in the American system ultimate authority resides not in transient majorities or officeholders, but in the enduring law established by the people.

Primary sources and authorities: U.S. Constitution, Articles III and VI; Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803); established principles of constitutional interpretation and the rule of law in the Anglo-American legal tradition.